

**Delaware Health Resources Board
Meeting Minutes
Thursday, March 26, 2015 2:30 PM
DelDOT Administration Building
Farmington/Felton Conference Rooms
800 Bay Road
Dover, Delaware 19901**

Board Members Present:

William Love, Acting Chair; Lynn Fahey; Leighann Hinkle; David Hollen; Suzanne Raab-Long; Bettina Riveros; John Walsh; and Gina Ward.

Board Members Absent: Vincent Lobo, MD; Harold Stafford; Mark Thompson; and Yrene Waldron.

Staff Present: Michelle Amadio; Helen Arthur; Marlyn Marvel; Joanna Suder; and Latoya Wright.

Call to Order and Welcome:

Acting Chair, Bill Love, welcomed the Board members and called the meeting to order at 2:30 p.m.

January 22, 2015 Meeting Minutes:

David Hollen made a motion to approve the January 22, 2015 Delaware Health Resources Board meeting minutes. Suzanne Raab-Long seconded the motion. There was a voice vote, from which John Walsh abstained. Motion carried.

Updates

First State Orthopaedics Surgery Center – Certificate of Public Review (CPR) Status

Mr. Love stated that the applicant submitted a Notice of Intent in February which was deemed incomplete. The applicant submitted additional information at the beginning of March.

Freedom of Information Act (FOIA) requests were received from Bayhealth, the Delaware Surgery Center and Eden Hill. These requests have been fulfilled.

The staff has received several requests for a public hearing. A public hearing is being scheduled for April 20, 2015 at 1:00 p.m. at the Edge Hill Shopping Center in Dover. A public notice will be published and the information will be sent directly to Board members and all parties involved.

The Review Committee includes Leighann Hinkle, Dave Hollen, and John Walsh.

First State Orthopaedics Surgery Center – CPR presentation

Mr. Love welcomed the guests from the First State Orthopaedics Surgery Center who gave a presentation on the proposed facility. A copy of the presentation is posted on the Health Resources Board website at <http://dhss.delaware.gov/dhss/dhcc/hrb/meetingpresentation.html>.

Jim Gallagher, an attorney with Morris James LLC and Counsel to First State Orthopaedics and its affiliated entities, spoke on behalf of First State Orthopaedics which has served the residents of Delaware for over 20 years. They currently employ 38 practitioners in various subspecialties of orthopaedics, as well as podiatry, interventional spine care and pain management. In 2014 those 38 practitioners had over 100,000 patient visits.

In the last several years First State Orthopaedics has been working on expanding their presence in Delaware into Kent County. In July 2014 Dr. Steven Tooze and Dr. Stephen Manifold of Tooze, Easter and Manifold in Dover, elected to join with First State. As a result, 9 of the 38 First State Practitioners regularly see patients in a First State Orthopaedics office that is located in Kent County. They are actively recruiting additional physicians to be able to see patients in Kent County.

During the past 15 years First State Orthopaedics practitioners have often taken surgical procedures to First State Surgery Center, which is located by the main offices of First State Orthopaedics in the Medical Arts Pavilion by the Christiana Hospital in Newark.

First State Orthopaedics worked with the state to develop the 23 hour freestanding surgicenter regulations that were just adopted toward the end of last year. The First State Surgery Center is looking to be one of the first in the state to be able to take advantage of those regulations and provide 23 hour service to their patients.

First State Orthopaedics, many of their physicians and those who are based in Kent County are looking to construct a new surgicenter in Dover believing that it would operate very similar to what is done at First State Surgery Center. The number of patients from Kent County who had procedures done in the Newark facility increased from almost 400 in 2013 to more than 600 in 2014. A new surgery center in Kent County would provide greater satisfaction for Kent County residents who are currently going to Newark, would be able to expand services to Kent County residents and would free up space in the New Castle facility for New Castle County residents.

Jeffrey Lord, Director of Operations for First State Orthopaedics, stated that this project brings a significant facet to Kent County that does not currently exist. They are focused on muscular skeletal procedures and this facility will enhance and raise the level of care for that.

The facility will also further solidify their commitment to education by bringing in physician assistants for rotations. The facility will be designed with an observation area attached to one of the operating rooms. This will enhance the experience of the physician assistants to be able to see more procedures.

First State Orthopaedics reached out to Delaware Technical and Community College and met with the staff. They are always looking for new places that can provide clinical hours for their students.

Robert Macleish, Sr., President of Lighthouse Construction, LLC, discussed the design and planned construction of the facility. They are planning a two story 48,000 square foot facility that would provide a range of medical and surgical providers specific to muscular skeletal injuries and disorders. The site is also established as a multi-modal transportation choice which allows and encourages employees and patients to take advantage of public transportation, as well as biking and pedestrian walkways.

Ray Krett, the First State Orthopaedics Administrator and Director of Nursing, stated that the surgery center will encompass about 14,000 square feet of the multi-disciplinary muscular skeletal center. Initially they will probably have about 15 people employed at the surgicenter when it opens. By the time the project is completed there will be about 50 medical and support people providing care at this facility and surgery center.

They have invested about \$3 million into the design and building of the surgery center, employing approximately another 100 design professionals and local construction workers to complete the project.

Currently there are no 23 hour surgery centers in Delaware. First State Orthopaedics was very active in getting that new regulation passed because their doctors were disturbed that they were not on a level playing field with Pennsylvania, New Jersey and Maryland. The Surgery Center in Newark has applied to become a 23 hour facility and the proposed Surgery Center will be designed as a 23 hour facility.

Currently nine of their physicians are in Kent County and they are actively recruiting an additional three. The three additional physicians will maintain office hours and surgical hours in Kent County.

Over 1,000 people in the last two years traveled from Kent County to New Castle County to have their surgery. It is a proven fact that having surgery closer to home and family has a positive effect on people. The new center will allow Kent County residents to remain in Kent County and provide them with the ability to recover better. They will not have to worry about issues such as transportation and fuel costs.

They will bring a history of high quality Orthopaedic surgery to Kent County and surrounding communities. They have a history of high patient satisfaction and outcomes and a history of providing Charity Care to those less fortunate.

First State Orthopaedics is the largest Orthopaedic Physician Practice in Delaware providing care for over 20 years. They have seventeen employees trained in orthopaedic surgery; three in pain management and rehabilitation and one in non-operative sports medicine. With their thirteen Nurse Practitioners and Physician Assistants there are 36 medical professionals available to provide patient care.

In 2010 they established their first Orthopaedic Office in Dover. They have completed the expansion of an office in Smyrna that will open in April 2015. There are 12 total First State Orthopaedics locations providing patient care. They also have two muscular skeletal radiologists on their staff; one in Newark and one in Dover.

The Smyrna office expansion is underway and it is hoped that the next project will be Kent County.

Questions and Comments

Mr. Hollen stated that First State Orthopaedics is using local contractors. He asked where the building supplies and materials are coming from. Mr. Krett stated that they buy as much as possible from local vendors. When they did the surgery center renovation they bought everything they could from local vendors.

Mr. Hollen asked when they say local contractors if they are talking about Delaware or the tri-state area. Mr. Krett stated that they are talking about Delaware. Everyone who worked on the surgery center was a Delaware corporation or Delaware construction company. They actually had people call them from Unions in Pennsylvania who demonstrated in front of the building. They believe it is very important to enhance the community by using local vendors.

Bettina Riveros asked Mr. Krett to provide more details around how they met the charity care requirements. Mr. Krett stated that each surgery center is required to provide charity care equal to a minimum of two percent of the revenues. In 2010 they provided over \$500,000 in charity care. Each year since then they have provided over \$300,000 in charity care. In 2013 they provided \$401,000 in charity care. That included what they did at the surgery center and physicians waiving their fees for underprivileged people. They are also part of the orthopaedic clinic at the Wilmington Hospital where care is provided at no charge to the underprivileged. Going forward they plan to meet or exceed the charity care requirements of the state of Delaware every year.

John Walsh asked what resources will be available in the 23 hour facility if someone stays overnight and there are complications.

Mr. Krett stated that they will have nursing staff and they will have access to a certified registered nurse anesthetist (CRNA), the physician and the anesthesiologist within 30 minutes by telephone, which is required. All of the staff are trained in advanced cardiac life support (ACLS). In addition to that they can call 911. Currently they are across the street from Christiana Hospital, and the new proposed facility will not be far from Kent General Hospital. They made some semi-private rooms with the ability to make them private. There are also showers and a nutrition station.

Mr. Love stated that the next step is for the Review Committee to meet, followed by a public hearing after which there may possibly be another Review Committee meeting. A recommendation from the Review Committee will be presented to the Board in June.

St. Francis (PET Scanner) – CPR Status

Mr. Love stated that the CPR for a PET scanner at St. Francis Hospital was received on January 14, 2015. The applicant was notified that the application was complete on February 2, 2015. According to the Delaware Code it was determined that since the PET Scanner is a lease for one day per week there is no capital expenditure involved in the transaction. As a result, the applicant was notified of the cancellation of the CPR on February 9, 2015. Cancellation of the Public Notice was posted in the newspapers on February 11, 2015.

Upcoming Items Before the Board

Health Resources Management Plan (HRMP) – Revisions Subcommittee

Mr. Love stated that there have been discussions on the revisions needed to the Health Resources Management Plan (HRMP). The HRMP Revisions Subcommittee members include Bill Love, Bettina Riveros, Joanna Suder and Gina Ward. The subcommittee is scheduled to meet on April 1, 2015 via conference call and will bring back recommendations to the Board.

Joint Sunset Committee 2012 Recommendations

The Board reviewed a PowerPoint presentation on the Joint Sunset Committee 2012 recommendations.

Helen Arthur stated that the Board needs to determine the next steps in order to comply with all of the recommendations. Some of that was already discussed around the HRMP revisions. The website has been updated. There is some information in the presentation in regard to a tool kit. The Board can look at what has already been established on the website and determine if that is sufficient to meeting that criteria or if there is something else that needs to be done with regard to establishing a tool kit.

Mr. Love stated that it has been proposed that the Board may want to form another subcommittee to review the Joint Sunset Committee recommendations and make recommendations on each one to the Board. Some of the recommendations have been completed and some have not.

Ms. Riveros asked if there is much overlap between the Joint Sunset Committee recommendations and the HRMP recommendations. Mr. Love stated that the HRMP recommendations are incorporated in the Joint Sunset Committee recommendations. Ms. Arthur stated that they are similar. Some of the adjustments have been made in the statute; however, they need to be stated in the HRMP and the bylaws need to be updated.

Ms. Riveros stated that one of the recommendations is to amend the Delaware Code to clarify that only for-profit acquisitions of a nonprofit health care facility are subject to the Certificate of Public Review process. She asked if that has been done yet.

Joanna Suder stated that this has not happened yet. Every time this issue comes up the Board requires an opinion from the broad division of the Attorney General's office to say whether or not it falls within the scope. If the code were amended the process would be much easier than going through the Attorney General's Office.

Ms. Riveros proposed that the Board wait until the next meeting to formally take the next steps to give everyone time to study the recommendations. In addition, a new member will be appointed and it will be good to have them involved.

Other Business

HRB Policy: Freedom of Information Act Requests

Mr. Love stated that one of the items before the Board is the need for a Freedom of Information Act (FOIA) policy to make sure they are in compliance with state law. The Board reviewed the proposed FOIA policy.

Ms. Suder stated that she and the staff have been working extensively on this. They have been receiving a lot of FOIA requests, mainly for CPR applications. There is confidential information involved in each one that must be redacted before the application is shared. Before the packets of information are released to the requester Ms. Suder goes through each one page by page and redacts what is not considered public information. Then it goes back to the staff to disseminate.

The state has 15 business days to respond to a FOIA request, even if the response is that more time is needed. Usually more time is needed because the CPR applications are large and it takes

longer than 15 business days to redact the information that is not public information. The information is tracked in a spreadsheet and the information is disseminated.

Ms. Riveros asked if the application being deemed complete is what triggers the process. Ms. Suder stated that the application is deemed ready to be released once it has been given to the review committee. At that point it is public information.

Ms. Arthur asked if there is an obligation to notify the applicant when a FOIA request is received. Ms. Suder stated that there is not because any information received by the state is a public record unless it falls within the limited exemptions.

Michelle Amadio asked if there are specific things within the application that must constantly be redacted that could be included as a separate attachment to the application to eliminate the need to redact the information. Ms. Riveros agreed that the Board could think about revising the application.

Public Comment

Dr. Thomas Barnett, President of the Delaware Surgery Center, stated that they will be opposing the application of First State Orthopaedics. Many of the things stated today were not accurate. There were years that First State Orthopaedics did not provide charity care. He stated that he does not think the patients traveling to New Castle County include Medicaid patients, because their office does not accept Medicaid. If someone calls their office to ask what their charity care policy is they will tell them to call someone else.

Medicaid patients have comprised 13 to 16 percent of the Delaware Surgery Center's income over the years. Dr. Barnett thinks that someone will find that it is very difficult for a Medicaid patient to get into First State Orthopaedics.

The Delaware Surgery Center has plenty of room at their present surgery center. They are only operating at 40 percent of capacity and they are more than willing to take on additional cases at their surgery center.

Sam Noel, of the Carpenter Local Union, asked if for the subcontractors that bid the Lighthouse Construction project will have the opportunity to bid on other Lighthouse Construction opportunities. He wanted to make them aware that they are interested in bidding in Dover.

Mr. Krett stated that they welcome their bid. Actually the union did bid on the project; however, they were not the lowest bid.

Next Meeting

The next Health Resources Board meeting will be held in the Farmington/Felton Conference Rooms on the first floor of the Department of Transportation Administration Building, 800 Bay Road, Dover on Thursday, April 23, 2015 at 2:30 p.m.

Mr. Love stated that several people are not able to attend the April 23rd meeting due to scheduling conflicts; therefore, Chairman Harold Stafford may decide to cancel the meeting.

Adjourn

The meeting adjourned at 3:30 p.m.

Guests Attending

Jennifer Anderson

Tom Barnett

David Blumberg, MD

Judy Chaconas

Michelle Clark

James Gallagher

Kristy Hull

Ray Krett, Jr.

Jeff Lord

Sean Mace

Stephanie Machen

Robert MacLeish, Sr.

Robert MacLeish, Jr.

Sam Noel

Tom O'Keefe

John Rhodes

Robert Smith

Rebecca Thomas

Delaware Surgery Center

Delaware Surgery Center

First State Orthopaedics

Delaware Health and Social Services

Bayhealth Medical Center

Morris James, LLP

Delaware Surgical Center

First State Orthopaedics

First State Orthopaedics

Eden Hill

DBHS

Lighthouse Construction, Inc.

Lighthouse Construction, Inc.

Carpenter Rep 626

Wohlsen Construction

Christiana Care Health System

Delaware Health and Social Services

Westminster Village